IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9321 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LIYAKATHUSSAIN GULAMABBAS SAIYED

Versus

STATE OF GUJARAT

Appearance:

MR ANAND L SHARMA for the Petitioner.

Mr.K.P. Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-2

MR JB PARDIWALA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/09/2003

ORAL JUDGEMENT

Rule. Mr.K.P.Raval, learned AGP, waives service

of rule on behalf of respondents 1 and 2 and Mr.Pardiwala, learned Advocate, waives service of rule on behalf of respondent No.3.

With the consent of the parties, the matter is taken up for final hearing today.

The grievance of the petitioner is that even though the petitioner is entitled to the higher grade scale on the basis of the scheme, known as "9-18-27", he has not been given the said benefit, on the ground that he has come by way of inter-district transfer and, therefore, he is not entitled to that benefit. It is submitted that his case is recommended by the Principal Judge, City Civil Court, Ahmedabad, for giving his such benefit and yet, it is not given.

On behalf of the State, it is argued that since the petitioner has come byway of inter-District transfer, he is not entitled to the said benefit and that he is required to undergo nine years' service at the transferred place and his earlier services, which he had rendered in other Districts, cannot be computed for the purpose of giving the said benefit.

The petitioner was, initially, appointed as a Junior Clerk by an order dated 9.10.1991 in the Court of Civil Judge, Bajana in Surendranagar District. The petitioner was thereafter transferred by way of inter-district transfer, on his own volition, by order dated 13.11.1995.

The grievance of the petitioner is that the Government is not sanctioning the higher pay scale, even though he has completed nine years' service.

The stand of the Government is that the earlier services rendered by the petitioner cannot be considered for the higher scale benefit as the petitioner has come by way of inter-District transfer on his own volition and his seniority is to be reckoned on completion of 9 years in the City Civil Court.

On behalf of the petitioner, reliance is placed on the decision of the Division Bench of this Court in LPA No.229 of 2003 and other cognate matters. It has been held by the Division Bench in paragraph 7 as under :-

" ... ...

After having heard the learned Advocates appearing for the parties and after examining and evaluating the factual profile of the entire matter and also after having considered the authorities cited before us, we are of the view that the order passed by the learned Single Judge, requires interference under Clause 15 of letters Patent. The Hon'ble Supreme Court has, in the case of Dwijben Chandra Sarkar (Supra), specifically held "that the past service of the appellants is to be reckoned for the limited purpose of eligibility computing the number of years of qualifying service, to enable them to claim the higher grade under the scheme of time bound promotions. The Hon'ble Supreme Court has further held that the appellants will be entitled to the higher grade from the date on which they have completed 16 years computing the same by taking into account their past service in the Rehabilitation Department also along with the service in the P & T Department. They will be so entitled as long as they remained in the post of Assistant and till their normal promotion to a higher post according to Rules." Even the Division Bench of this Court in the case of State of Gujarat Vs. Ajitsinh Chaturji Rathod - LPA No.779 of 2000, decided on 4.12.2000, has taken the view that "mere transfer from Surat to Mehsana on the condition to be at the bottom, at the new station, upon request, would not, in any way, adversely affect the right to claim benefit of higher grade under the relevant G.R." In our view, the learned single Judge is, therefore, not right in holding that for conferring of benefit of higher grade scale on completion of 9 years' service, the service rendered in Mehsana District Panchayat alone can be considered. This view is contrary to the view taken by the Hon'ble Supreme Court, in the case of Dwijben Chandra Sarkar (supra), and the Division Bench judgment of this Court in the case of State of Gujarat v. Ajitsinh Chaturji Rathod (supra).

... ..."

Considering the said judgment, it is clear that for getting the aforesaid higher grade scale, earlier service rendered by the petitioner is also required to be taken into consideration and simply because the petitioner has come on his own volition is no ground for denying the

said benefit and the petitioner will be entitled to get the higher grade scale from 14.10.2000 on completion of 9 years' continuous service. The respondents may pass appropriate order in this connection.

The petition is accordingly allowed. Rule is accordingly made absolute with no order as to costs.

16th September, 2003 (P.B. Majmudar, J.)

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(apj)